



Office of the Attorney General

State of Texas

June 23, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. Steven C. Copenhaver
Attorney at Law
Walsh, Judge, Anderson, Underwood & Schulze, P.C.
P.O. Box 2156
Austin, Texas 78768

OR93-333

Dear Mr. Copenhaver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19399.

The Round Rock Independent School District (the "school district") received a request for information concerning a management audit performed by outside consultants to the school district. You have agreed to provide most of the information requested; however, you contend that part of the requested information is not covered by the Open Records Act (the "act"). Specifically, that part of the request that you contend is not within the confines of the act is for:

All drafts of the portion of the management audit pertaining to vocational education as attached to the aforementioned memorandum, together with any correspondence between any employee of Round Rock Independent School District and the auditors pertaining to this portion of the management audit. We further request copies of any notes of the auditors pertaining to any conferences with any district employees pertaining to this matter. This request for information is intended to include any such documents in the hands of the auditors as agents for the district.

You argue that the auditors are independent consultants and therefore their working papers are not in the school district's possession as required by the act.

Section 3(a) provides in part:

All information collected, assembled, or maintained by *or for* governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in

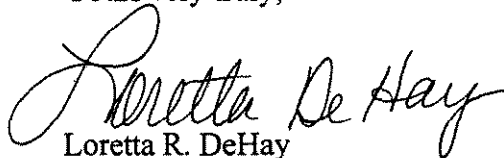
connection with the transaction of official business is public information and available to the public . . . [Emphasis added.]

The criteria used to determine whether the act applies to information held by an independent consultant are: 1) the information relates to the governmental body's official business; 2) the consultant acts as an agent of the governmental body when collecting the information; and 3) the governmental body has or is entitled to the information. Open Records Decision No. 499 (1988). We think these factors apply to the requested information in the auditor's possession. The information clearly relates to the school district's official business, *i.e.*, information about the school district's vocational education department. The agreement between the school district and the auditor provides that the school district furnish the auditor with the basic information required for the audit, and the auditor conducted interviews of school district employees to obtain some of this basic information. Therefore, the auditor acted as an agent of the school district when it collected the information. *See, e.g.*, Open Records Decision No. 437 (1986) (an independent contractor can act as agent when collecting information on behalf of a governmental body). Moreover, as stated in Mr. Farmer's letter from your office dated May 4, 1993, a preliminary draft of the audit report was made available to the school district prior to release of the final audit report. This is evidence that the school district was entitled to information, other than a final report, in the auditor's possession. Therefore, the information in the request is subject to the Open Records Act.

We note that at the time your office provided us with some of the requested information, Mr. Farmer raised a new exception not previously raised in your first letter requesting an opinion from our office. A governmental body may not raise additional exceptions after the ten day deadline established by section 7(a) without evidence of compelling reasons to withhold the information. Open Records Decision No. 515 (1988). You have not provided us with compelling reasons why the information should be withheld, therefore you must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/JBP/jmn

Ref.: ID# 19399
ID# 20126

Enclosures: submitted documents

cc: Mr. Richard L. Arnett
Brim & Arnett
114 W. 7th Street, Suite 100
Austin, Texas 78701-3005
(w/o enclosures)